

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2800

SPONSOR: Banking and Insurance Committee and Senator Argenziano

SUBJECT: Insurance Agents and Agencies

DATE: March 26, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2800 provides for the following regulatory changes pertaining to insurance agencies and agents under the Florida Insurance Code:

- Requires the licensure of insurance agencies by the Department of Financial Services by October 1, 2005;
- Authorizes the Department of Financial Services to obtain background information as to insurance agency applicants; secure fingerprints of specified owners, partners, officers, and directors; and obtain additional information as required to ascertain the trustworthiness and competence of insurance agency applicants;
- Creates a personal lines agent license which would be limited to transactions involving property and casualty insurance for noncommercial purposes, such as the sale of residential homeowners and personal automobile insurance;
- Prohibits the use of deceptive agency names;
- Clarifies in the Insurance Code that all licensees of the Department of Financial Services or the Office of Insurance Regulation must make their books, accounts and records available to examiners and investigators for electronic reproduction purposes upon request;
- Repeals the requirement that a primary agent must be designated for each agency location; and
- Provides for other conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 624.318, 624.501, 626.015, 626.016, 626.022, 626.112, 626.171, 626.172, 626.191, 626.201, 626.221, 626.241, 626.2815, 626.292, 626.311, 626.321, 626.342, 626.382, 626.451, 626.536, 626.561, 626.572, 626.601, 626.602, 626.6115, 626.6215, 626.727, 626.732, and 626.7351.

This bill repeals section 626.592 of the Florida Statutes.

II. Present Situation:

Personal Lines Agents

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers. Requirements vary by line and are based upon resident or nonresident license type.¹

Although requirements vary by line of authority, general requirements for agent licensure include being 18 years of age; submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints. Applicants for a resident agent license must be Florida residents.

According to the National Association of Insurance Commissioners (NAIC), Florida is one of eight states that does not issue a personal lines agent license. These licenses are limited to agents transacting business related to property and casualty insurance which may be sold to individuals and families both in Florida and in other states. These licenses are limited to noncommercial purposes only, primarily residential homeowners insurance and personal automobile insurance sales. Under current law, limited customer representatives may sell private passenger motor vehicle insurance, but only to Florida residents.²

According to representatives with the department, by establishing a personal lines license in Florida, it will allow insurance companies and other large agency producers to establish agency locations in Florida for the purpose of transacting insurance with customers residing in Florida or residing in other states, thereby enhancing Florida's job market and overall economy. These officials state that creating the personal lines agent license will also enhance reciprocity with other states. In 2002, the Insurance Code was amended in order to bring Florida into compliance with the uniformity and reciprocity provisions of the federal Gramm-Leach-Bliley Act (GLB Act), while preserving certain "consumer protection" laws.³ Under the GLB Act, certain state regulation over insurance agent licensing is preempted to the National Association of Registered Agents and Brokers unless a majority of the states and territories achieve uniformity or reciprocity by November 12, 2002. The GLB Act requires states and territories either to enact

¹ There are currently 252,470 licensed resident insurance agents in Florida and 115,277 non-resident agents licensed in the state.

² Under s. 626.015, F.S., a "limited customer representative" means a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency. A "customer representative" means an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency. "General lines agents" are authorized under state law to transact any or all of the following lines of insurance: property, casualty, surety, and marine insurance. A general lines agent may also sell health insurance without being separately licensed as a health agent only for those insurers also represented by that same agent as to property and casualty insurance.

³ Ch. 2002-206, L.O.F.

uniform producer licensing laws or to ensure non-discriminatory treatment through reciprocity for non-resident agents. The department believes that the Florida law is in compliance with the National Association of Insurance Commissioner's Producer Licensing Model Act, but has not yet received NAIC approval.

Insurance Agencies

Under the Insurance Code, an insurance agency is defined to be a business location at which an individual, firm, partnership, corporation, association, or other entity engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent.⁴ According to the National Association of Insurance Commissioners (NAIC), Florida is the only state in the country that does not require insurance agencies and their owners to obtain licenses. As noted above, the Florida Department of Financial Services currently licenses insurance companies and individual agents who sell the insurance policies; however, insurance agencies, which employ agents, and their owners are not licensed.

According to representatives with the department, in each of the past three years, the department has investigated an average of 400 complaints involving misappropriation of funds for insurance sold at agencies. The department does not currently have the ability to track, monitor, or perform background checks on insurance agencies and their owners and thus does not know whether owners have a history of fiduciary-related crimes. In addition, these representatives assert that they are unable to take administrative action against an owner who participated in a misappropriation scheme because only the agent could be held responsible for the purposes of regulatory action by the department.

Misleading/Deceptive Insurance Agency Names

Officials with the department assert that, in addition to having no control over the owner/operators of insurance agencies, the department has no authority to prohibit the deceptive or misleading naming of insurance agencies. Consumers have reported that because of a misleading business name, they were led to believe the agency offered financial advice or counseling when, in fact, they were offered long-term care insurance, annuities or other insurance products.

The current law provisions which are amended by the provisions of this bill are outlined below, under Effect of Proposed Changes.

III. Effect of Proposed Changes:

Section 1. Amends s. 624.318, F.S., relating to the conduct of examinations or investigations and access to records. The measure creates subsection (7) to provide authority to the Department of Financial Services (department) or the Office of Insurance Regulation (office), and their examiners and investigators, to electronically reproduce records, accounts, and documents in the possession of the person being examined or investigated.

⁴ S. 626.015, F.S. The exceptions to this definition are employees of the individual, firm, partnership, corporation, association, or other entity, an insurer as defined by s. 624.03, F.S., or an adjuster as defined in s. 626.015(1), F.S.

Current law states that neither the department nor the office shall remove any document of the person being examined except with written consent of such person given in advance of such removal, or pursuant to a court order. This bill provides that notwithstanding that provision, the person being examined cannot refuse to consent to the removal of the documents from their office when it is necessary for the purpose of electronic reproduction, unless such person provides reasonable access to electronic reproduction facilities in their office. The reasonable expense of reproduction must be borne by the person being examined or investigated. The bill further provides that this subsection is applicable to all investigations and examinations authorized under the Florida Insurance Code. Chapters 624-632, 634-636, 641, 648, and 651 constitute the Insurance Code.

Section 2. Amends s. 624.501(20), F.S., which refers to fees and licenses, to delete the term “insurance agency” and to clarify that the original or renewal 3-year license fee for an adjusting firm is \$60.00.

Section 3. Amends s. 626.015, F.S., to create a definition of the term “personal lines agent” to mean a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.

Section 4. Amends s. 626.016(1), F.S., which relates to the powers and duties of the Chief Financial Officer (CFO) and the department, to provide that such powers of the CFO and the department apply with respect to insurance agencies.

Section 5. Creates subsection (3) of s.626.022, F.S., pertaining to the scope of part 1 of ch. 626, F.S. (insurance representatives, licensing procedures, and general requirements). The bill clarifies that part 1 applies to general lines agents and applicants and personal lines agents and applicants, except where otherwise provided.

Section 6. Amends s. 626.112(7)(a), F.S., relating to insurance agencies. The bill requires that effective October 1, 2005, no individual, firm, partnership, corporation, or other entity shall act as an insurance agency unless it possesses an insurance agency license. The bill further provides that every agency engaged in business prior to October 1, 2005, must file an application for licensure by that date. If an agency fails to file an application, the department shall impose an administrative penalty in an amount of up to \$10,000.

The bill deletes the present law provisions relating to insurance agencies. Under current law, an insurance agency is required to apply for a license, as a condition precedent to continuing business, if the department finds that with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, that the person has violated various proscribed activities. The list includes eighteen such activities including if the person has been found guilty, pleaded guilty, or nolo contendere to a felony relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered; employed any person in a managerial capacity who is under an order of revocation or suspension; operated the agency in violation of s. 626.747, F.S. (branch agencies) or in a manner hazardous to the insurance-buying public by committing specified acts; employed a person who, within the preceding 3 years, has had his relationship with the agency terminated; and circumvented the requirements or prohibitions of the Insurance Code.

However, an insurance agency does not have to obtain a license if it can prove the following:

- it is severing its relationship with each majority owner, manager, officer, or other person who managed or controlled such agency and who violated the above provisions; or
- no majority owner, manager, officer, or other person who managed such agency is to be affiliated with such agency in any capacity for a period of 3 years from the date of the severance.

Section 7. Amends the title of s. 626.171, F.S., to include applications for license “as agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.” Removes the term “insurance agency” and an obsolete date reference, and deletes a provision relating to the requirement of an appropriate signature on an application for an insurance agency.

Section 8. Amends s. 626.172, F.S., to authorize the department to issue a license as an insurance agency to any person who files a written application and qualifies for such license. The application must be signed by the owner(s) of the agency; fingerprints must be submitted to the department by specified owners (including owners of 10 percent or more of the voting shares of a corporation which are traded on a securities exchange), sole proprietors, partners and officers; and a fingerprint processing fee submitted as specified under s. 624.501, F.S. However, fingerprints do not have to be filed for a person who previously submitted fingerprints to the department and obtained a current, valid license.

Section 9. Amends the term “him or her” to “the applicant” in s. 626.191, F.S.

Section 10. Amends the term “him or her” to “the applicant’s” in s. 626.201, F.S.

Section 11. Removes subsection (2)(e) in s.626.221, F.S., which will eliminate allowing individuals who have qualified by passing the general lines agent’s examination (are actively licensed and appointed), from filing an appointment to qualify as a managing general agent, service representative, customer representative, or all lines adjuster, without an additional examination and application. The bill further provides for technical changes by deleting the word “appointment” and inserting “licensure.”

Section 12. Amends s. 626.241, F.S., to provide that an examination for licensure as a personal lines agent must be limited in scope to the kinds of business transacted under such license.

Section 13. Amends s.626.2815, F.S., pertaining to continuing education, to remove obsolete compliance periods and make technical conforming changes. The bill eliminates a requirement that insurance agents continuing education classes include instruction on the subject of unauthorized entities that sell insurance. The requirements were for a minimum of two hours every two years.

Section 14. Amends s. 626.311, F.S., to include personal lines agents and define the type of insurance the personal lines agent is allowed to transact.

Section 15. Amends s. 626.342, F.S., to include an insurance agency in the provisions which prohibit the furnishing of specified forms and supplies under certain circumstances.

Section 16. Amends s. 626.382, F.S., to require the renewal of an insurance agency license and to provide the department with the authority, by rule, to adopt a form for the processing of renewal insurance agency licenses.

Section 17. Amends s. 626.451, F.S., to clarify that by authorizing the appointment of an agent or other specified party to the department, the appointing entity is certifying to the Department that it is willing to be bound by the acts of such agent or other party within the scope of the appointment.

Section 18. Amends s. 626.536, F.S., to include an insurance agency in the requirement to report to the department within 30 days any administrative actions taken against said agency.

Section 19. Amends s. 626.561, F.S., to include an insurance agency in the requirements for reporting and accounting for funds and punishment that could be taken for failure to report such funds.

Section 20. Amends s. 626.572, F.S., to include an insurance agency in the requirements regarding the rebating of commissions.

Section 21. Amends s. 626.601, F.S., to allow the department to investigate an insurance agency upon the department's own motion or upon a written complaint signed by any interested person and filed with the department.

Section 22. Creates s. 626.602, F.S., to allow the department to disapprove the use of certain true or fictitious insurance agency names. The bill provides the grounds for the departments to disapprove the use of any such name including: that the name is an interference with or is too similar to a name already filed and in use by another agency or insurer; that the use of the name may mislead the public; that the name states or implies that the agency provides advice and counsel rather than sells insurance; and, that the name states or implies that the agency is an underwriter.

Section 23. Amends s. 626.6115, F.S., to add another basis for the department to deny, suspend, revoke, or refuse to continue the license of any insurance agency or owner, partner, manager, director, officer, or other person who manages or controls such agency. The additional basis is the denial, suspension, or revocation of a license to conduct any regulated profession, business, or vocation relating to the business of insurance in this state, any other state, any nation, possession or district of the United States, any court, or any lawful agency thereof. However, the bill clarifies that the grounds for administration action against one licensed agency do not necessarily constitute grounds for actions against related agencies.

Section 24. Amends s. 626.6215, F.S., by adding a provision which allows the department to refuse, suspend or revoke an insurance agency license on the grounds of failure to take corrective action or report a violation to the department within 30 days after a licensee's violation is known or should have been known by one or more of the partners, officers or managers of the agency.

However, the bill clarifies that the grounds for administration action against one licensed agency do not necessarily constitute grounds for actions against related agencies.

Section 25. Amends s. 626.641, F.S., to allow the Department to use the same grounds for denial of a reinstatement of a license that apply to the denial of licenses or appointments for applicants. The bill requires that applicants for another license or appointment pursuant to this provision must qualify for licensure in the same manner as a first-time applicant and be subject to denial of the application by the Department pursuant to specified provisions.

Section 26. Amends s. 626.727, F.S., pertaining to general lines agents, customer representatives, service representatives, and managing general agents. The bill provides that the provisions of this section which apply to general lines agents and applicants also apply to personal lines agents and applicants.

Section 27. Amends s. 626.732, F.S., to include specified pre-licensing education requirements for personal lines agents. Such requirements pertain to completion of classroom courses, correspondence courses, or employment experience in responsible insurance duties.

Section 28. Amends s. 626.7351, F.S., requiring the applicant for licensure as a customer representative to be at least 18 years of age. This complies with the age requirement for all other insurance representative licensees.

Section 29. Amends s. 626.292, F.S., to correct a statutory cross-reference.

Section 30. Amends s. 626.321, F.S., pertaining to limited licenses for baggage and motor vehicle excess liability insurance. The bill provides that an entity applying for a license under this section is required to submit only one application for a license; is required to obtain a license for each office; and is required to pay applicable license fees. The bill further provides that for limited licenses for baggage and motor vehicle excel liability insurance, a business entity offering this type of insurance may use part-time employees to offer such insurance. The measure also corrects a statutory cross-reference.

Section 31. The bill provides that the Department of Financial Services cannot be required to issue personal lines insurance agent licenses on the effective date of this law (October 1, 2004) if its licensing systems have not been changed to accommodate the new license.

Section 32. Repeals s. 626.592, F.S., which pertains to primary agents. Pursuant to current law, a person operating an insurance agency in each location of a multiple location agency shall be designated as the primary agent for each insurance agency. The primary agent is responsible for the hiring and supervision of all individuals within an insurance agency. Under the provisions of this bill which licenses insurance agencies, the current requirements pertaining to primary agents are not necessary.

Section 33. Provides an effective date of October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Financial Services provided the following economic impact statement:

Insurance Agency Licensing

According to officials with the Department of Financial Services(Department), it used as a guide *The Florida Research & Economic Database*, and estimated that approximately 12,715 firms are currently operating in Florida as insurance agencies. These firms will have to obtain an insurance agency license, but will not have to pay for a 3-year license fee as provided for in the bill. If officers of the insurance agency are licensed agents, and have filed a fingerprint card with the Department within the last ten years, a fingerprint processing fee will not be required. In cases where officers are not licensed agents, a \$64 fee will be required if the officer submits a paper fingerprint card for processing. If the officer uses the Live Scan process now available in Florida, the cost will be \$60 in most locations throughout the state. The fingerprint charge is a one-time charge for the Department unless there are changes in ownership or officers.

Personal Lines Agent Licensing

The Department estimates that there will be approximately 2,500 applications received in the first year for this new licensure category. Each applicant will be required to submit a \$50 application fee, a \$5 license fee, a \$56 examination fee, and a \$64 fingerprint process fee if a paper card is submitted (\$60 for Live Scan). Each company choosing to appoint the personal lines agent will be charged \$60 per appointment which will be valid for 2 years. Continuing education providers and pre-licensing providers interested in providing educational courses for the new license category will be required to pay the Department a one-time fee of \$100 for each new course submitted to the Department for approval.

C. Government Sector Impact:

The Department of Financial Services provided the following economic impact statement:

FISCAL IMPACT ON STATE AGENCIES:			
	(FY 04-05)	(FY 05-06)	(FY 06-07)
	Amount/FTE	Amount/FTE	Amount/FTE
A. Revenues			
1. Recurring			
<u>Personal Lines Licensing</u>			
a) \$60 per appointment for one company X estimated 2,500 agents:	\$150,000	Unknown	Unknown
b) \$50 application fee X estimated 2,500 agents:	\$125,000	Unknown	Unknown
c) \$64 fingerprint processing fee X estimated 2,500 agents: (pass thru money is paid out to FDLE & FBI or Live Scan provider)	\$160,000	Unknown	Unknown
d) \$56 examination fee X estimated 2,500 agents: (pass thru money is paid out to examination provider)	\$140,000	Unknown	Unknown
e) \$5 license fee X estimated 2,500 agents: (pass thru money is paid out to examination provider)	\$ 12,500	Unknown	Unknown
<u>Total Recurring Revenue</u>	\$587,500	Unknown	Unknown
2. Non-Recurring			
<u>Insurance Agency Licensing</u>			
a) \$64 fingerprint processing fee per officer for non-agent owners X estimated 4 officers X estimated 6,357 agencies (1/2 of total number of agencies (12,715) These funds paid to FDLE, FBI or Live Scan provider	0	\$1,627,392	Unknown
<u>Total Non-Recurring Revenue</u>		\$1,627,392	
B. Expenditures:			
1. Recurring			
2. Non-Recurring			
Upgrade Computer	\$25,000		\$25,000

Note: The current licensing computer systems will need to be upgraded to accommodate on-line applications for agencies and the new license category. The estimated cost is \$25,000 in fiscal year 2004-2005. The program for renewal for agency license will be needed in fiscal year 2006-2007 and the estimated cost is \$45,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
